UNITED STATES BANKRUPTCY COURT DISTRICT OF MINNESOTA

In re: Case No. 04-41069-RJK Chapter 13

Christine Renae Larsen,

Debtor(s).

NOTICE OF HEARING AND MOTION FOR RELIEF FROM STAY

- TO: Debtor(s) and Attorney for Debtor(s); Michael J Farrell, Chapter 13 Trustee; U.S. Trustee; and other parties in interest.
- 1. Wells Fargo Financial Acceptance, a secured creditor of Debtor(s), by its undersigned attorney, moves the Court for the relief requested below, and gives notice of hearing herewith.
- 2. The Court will hold a hearing on this motion at **2:00 pm** on **Thursday, October 7, 2004**, before the Honorable Robert J. Kressel, in Courtroom No. 8 West, at the 300 South Fourth Street, Minneapolis, Minnesota 55415.
- 3. Any response to this motion must be filed and delivered not later than Monday, October 4, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than Tuesday, September 28, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays, and holidays). UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.
- 4. This motion arises under 11 U.S.C. § 362 and the codebtor stay of 11 U.S.C. § 1301 and Fed. R. Bankr. P. 4001. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 9006-1, 9013-1 through 9013-3. Wells Fargo Financial Acceptance seeks relief from the automatic stay of 11 U.S.C. § 362 and the codebtor stay of 11 U.S.C. § 1301 with respect to certain personal property owned by Debtor(s).

- 5. The petition commencing this Chapter 13 case was filed on March 2, 2004 and the case is now pending in this Court. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 1334 and 157(a), Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding.
- 6. Wells Fargo Financial Acceptance holds a valid, perfected interest in a 1997 Chevrolet Blazer, vehicle identification number 1GNDT13W7V2182345 (the "Vehicle").
- 7. Copies of Wells Fargo Financial Acceptance's agreement with Debtor(s) (the "Contract") and evidence of perfection of Wells Fargo Financial Acceptance's interest in the Vehicle are attached hereto as Exhibits A and B and incorporated herein by reference.
- 8. The Chapter 13 Plan requires payments to Wells Fargo Financial Acceptance. The payments are to be made by the Trustee. On information and belief, a delinquency under the Plan exists for the months of June through August 2004 totaling at least \$1,350.00.
- 9. The balance due under the Contract is \$6,729.76 as of the date hereof. On information and belief, the fair market value of the Vehicle is approximately \$6,800.00. Connie Sue Johnston is a codebtor on the Contract
- 10. The failure of the Debtor(s) to make payments pursuant to the Chapter 13 Plan or otherwise provide Wells Fargo Financial Acceptance with adequate protection of its interest in the Vehicle constitutes cause, within the meaning of 11 U.S.C. § 362(d)(1) and 362(d)(2), entitling Wells Fargo Financial Acceptance to relief from the stay.
- 11. Wells Fargo Financial Acceptance requests that any order modifying the automatic stay be effective immediately as allowed under Federal Bankruptcy Rule 4001(a)(3).
- 12. If testimony is necessary as to any facts relevant to this motion, A. Hansen, or some other representative of Movant, will testify on behalf of Wells Fargo Financial Acceptance.

13. This notice of motion and motion also serves as notice of default as may be required by

Cobb v. Midwest Recovery Bureau Co., 295 N.W.2d 232 (Minn. 1980). If the default is not cured before

the hearing, Wells Fargo Financial Acceptance will repossess the Vehicle promptly upon the Court

signing the Order.

14. THIS IS AN ATTEMPT TO COLLECT A DEBT, AND ANY INFORMATION

OBTAINED WILL BE USED FOR THAT PURPOSE.

WHEREFORE, Wells Fargo Financial Acceptance respectfully moves the Court for an order: (i)

modifying the automatic stay of 11 U.S.C. § 362 and the codebtor stay of 11 U.S.C. § 1301 so as to

permit Wells Fargo Financial Acceptance to foreclose its interest in the Vehicle in accordance with

Minnesota law, (ii) finding that Bankruptcy Rule 4001(a)(3) of the Federal Rules of Bankruptcy

Procedure is not applicable, and (iii) granting such other relief as may be just and equitable.

Dated: September 13, 2004

STEWART, ZLIMEN & JUNGERS

By /e/ Bradley J. Halberstadt

Bradley J. Halberstadt (#215296)

Attorneys for Movant

430 Oak Grove Street, Ste. 200

Minneapolis, Minnesota 55403

(612) 870-4100

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UNITED STATES BANKRUPTCY COURT DISTRICT OF MINNESOTA

In re:

Chapter 13 Case

Christine R. Larsen,

Bky, No. 04-41069

Debtor(s).

Affidavit of Andy Hansen

I, Andy Hansen, of Wells Fargo Financial Acceptance, declare under penalty of perjury that the following is true and correct to the best of my knowledge, information and helief:

Wells Fargo Financial Acceptance has a security interest in the following (the "Collateral"):

1997 Chevrolet Blazer VIN# 1GNDT13W7V2182345.

- \$6,729.76 is the outstanding balance under the contract as of September 13, 2004.
- \$475.94 is the amount of the existing delinquency under the contract.
- 4. \$6,800.00 is the fair market value of the Collateral.
- 5. Yes Appropriate insurance has been verified.
- 6. 1350.00 is the payment default under the Chapter 13 Plan.

Further your affiant sayeth not.

Dated:

9/13/200

Andy Hansen

Bankruptcy Specialist

Wells Fargo Financial Acceptance

Subscribed and sworn to before me on September 13, 2004

JENNIFER SUE ELIAS NOTARY PUBLIC-MINNES Ny Coominen Riches Jos. 41.

NOLLS FARGO ACCEPT

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NOTE AND SECURITY AGREEMENT (Including Last)

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DERVER & VENUCLE REKVICES DIVISION
115 MINNESOTA ST. ST. PAUL MN 15101
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CONTRIMATION DE LIEN PERFECTION - DESTOR NAME AND ADDRESS

St. Paul, MN

JOHNSTON CONNIE SUE LARSEN CURISTINE RENAE 8705 71ST ST

CLEAR LAKE MN 55519

HZ6765023 AWKER. FENDLIZMAAS 03/18/05

HTK645

LST SECURED PARTY

LIEN HOLDER

RETAIN THIS DOCUMENT - See appenda

WELLS FARGE FINANCIAL 3200 NW MAIN ST 258 COUN RAPIDS MN 65448-1197

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UNITED STATES BANKRUPTCY COURT DISTRICT OF MINNESOTA

Christine Renae Larsen,

Chapter 13

Case No.04-41069-RJK

Debtor(s).

In re:

MEMORANDUM IN SUPPORT OF MOTION FOR RELIEF FROM STAY

Wells Fargo Financial Acceptance submits this memorandum of law in support of its motion for relief from the stay in the above-entitled matter.

FACTS

Wells Fargo Financial Acceptance holds a perfected interest in a 1997 Chevrolet Blazer with a vehicle identification number 1GNDT13W7V2182345 (the "Vehicle"). Payments due under the terms of the Chapter 13 Plan totaling \$1,350.00 have not been made by the Debtor(s). The balance due under the Contract is \$6,729.76 as of the date hereof. On information and belief, the fair market value of the Vehicle is approximately \$6,800.00. Connie Sue Johnston is a codebtor on the Contract

<u>ARGUMENT</u>

Pursuant to Section 362(d)(1) of the Bankruptcy Code, relief from the automatic stay shall be granted upon request of a creditor "for cause, including the lack of adequate protection of an interest in property of such [creditor]." 11 U.S.C. § 362(d)(1). Here, the payments have not been made by the Debtor(s) under the Chapter 13 Plan.

Wells Fargo Financial Acceptance does not have, and has not been offered, adequate protection of its interest in the Vehicle. The Plan of the Debtor(s) fails to provide Wells Fargo Financial Acceptance with the indubitable equivalent of its claim. Such circumstances constitute cause, within the meaning of Section 362(d)(1), entitling Wells Fargo Financial Acceptance to relief from the stay. See Reinbold v. Dewey County Bank, 942 F.2d 1304, 1306-07 (8th Cir. 1991) (debtor's failure to comply with plan

supports bankruptcy court's decision to grant relief from the automatic stay for cause); <u>In re Wieseler</u>, 934 F.2d 965, 967 (8th Cir. 1991) (debtor's failure to comply with stipulation provided cause for dissolving automatic stay). <u>See also First Federal Savings and Loan Ass'n. of Minneapolis vs. Whitebread (In re Whitebread)</u>, 18 B.R. 192 (Bankr. D. Minn. 1982); <u>In re Quinlan</u>, 12 B.R. 516 (Bankr. W.D. Wis. 1981); <u>In re Caulk</u>, 9 B.R. 242 (Bankr. E.D. Penn. 1981).

CONCLUSION

For all the reasons set forth herein, Wells Fargo Financial Acceptance is entitled to an order terminating the automatic stay of 11 U.S.C. § 362 and the codebtor stay of 11 U.S.C. § 1301 and authorizing it to foreclose its interest in the Vehicle in accordance with Minnesota law.

Respectfully Submitted,

Dated: September 13, 2004 STEWART, ZLIMEN & JUNGERS

By /e/ Bradley J. Halberstadt
Bradley J. Halberstadt (#215296)
Attorneys for Movant
430 Oak Grove Street, Ste. 200
Minneapolis, Minnesota 55403
(612) 870-4100

In re:

Christine Renae Larsen

Debtor(s).

UNSWORN DECLARATION

FOR PROOF OF SERVICE

Bky. No. 04-41069-RJK

Bradley J. Halberstadt, an agent of Stewart, Zlimen & Jungers, attorney(s) licensed to practice law in this court, with office address of 430 Oak Grove Street, Ste. 200, Minneapolis, Minnesota 55403, declares that on the date set forth below, I served the annexed **Notice of Hearing and Motion For Relief From Stay** upon each of the entities named below by mailing to each of them a copy thereof by enclosing same in an envelope with first class mail postage prepaid and depositing same in the post office at Minneapolis, Minnesota addressed to each of them as follows:

.....

United States Trustee Suite 1015 300 South 4th Street Minneapolis, MN 55415 (Attorney for Debtor(s)) Curtis K. Walker 4356 Nicollet Ave. S. Minneapolis, MN 55409 (Trustee) Michael J Farrell PO Box 519 Barnesville, MN 56514

(Debtor(s)) Christine Renae Larsen 8827 71st Street Clear Lake, MN 55319 (Co-Obligor) Connie Sue Johnston 8705 71st Street Clear Lake, MN 55319

And I declare, under penalty of perjury, that the foregoing is true and correct.

Dated: September 13, 2004 Signed: /e/ Bradley J. Halberstadt

UNITED STATES BANKRUPTCY COURT DISTRICT OF MINNESOTA

In re:	Case No. 04-41069-RJK
Christine Renae Larsen,	Chapter 13
Debtor(s).	ORDER GRANTING MOTION FOR RELIEF FROM STAY
The above-entitled matter came before t	he Court for hearing on Thursday, October 7, 2004 at the
motion of Wells Fargo Financial Acceptance se	eking relief from the automatic stay of 11 U.S.C. § 362
and the codebtor stay of 11 U.S.C. § 1301. App	pearances were noted in the Court's record. Based upon
the proceedings on said date, the statements of	counsel, and all of the files and records herein, the Court
now finds that cause exists entitling Wells Farg	o Financial Acceptance to the relief requested.
NOW, THEREFORE, IT IS HEREBY (ORDERED that the automatic stay of 11 U.S.C. § 362 and
the codebtor stay of 11 U.S.C. § 1301 is immed	iately terminated as to Wells Fargo Financial Acceptance,
and Wells Fargo Financial Acceptance is author	rized to foreclose its interest in the subject 1997 Chevrolet
Blazer, vehicle identification number 1GNDT1	3W7V2182345 in accordance with Minnesota law.
Notwithstanding Fed R. Bankr. P. 4001(a)(3), the	his order is effective immediately.
Dated:	
	bbert J. Kressel
Un	ited States Bankruptcy Judge